HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 144 of 2003 (SS)

Sadanand Bhatt Vs. Executive Officer Nagar Palika, Khatima

Approved for reporting.

~~Not approved for reporting~~

Date of decision 31.12.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 144 of 2003

Sri Sadanand Bhatt …… Petitioner

Versus

The Executive Officer, Nagar Palika Parishad, Khatima,
District Udham Singh Nagar & others …….. Respondent

Sri Harendra Belwal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 31.12.2003

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus directing the respondents to pay gratuity, arrears of pay, leave encashment and pension etc. to the petitioner.

Brief facts giving rise to the present writ petition are that the petitioner was working as Peon in Nagar Palika Parishad, Khatima, District Udham Singh Nagar. He retired after attending the age of superannuation on 31.03.2001. After his retirement the petitioner approached the authorities concerned for payment of post-retirement benefits i.e. gratuity, leave encashment, G.I.S. G.P.F. and pension etc.

but the respondents did not take care to pay the same inspite of the repeated requests made by the petitioner.

The petitioner has stated that he sent a representation through advocate on 31.8.2001 to the Executive Officer, Khatima for payment of retirement dues to him but no action has been taken on his request.

On 21.5.2001 the Assistant Director write the Executive Officer, Nagar Palika Parishad, Khatima regarding payment of retirement dues of the petitioner but even then no payment was made to him.

On behalf of the respondents counter affidavit has been filed and it has been admitted that the arrears of the salary, Bonus, leave encashment and dearness allowances of the petitioner are pending with the respondent no. 1. Undertaken was also given in paragraph no. 8 of the written statement that respondents will release all dues of the petitioner as early as possible but at present respondents are not able to pay the same due to paucity of funds.

Learned counsel for the petitioner has relied upon in 1985 (1) S.C.C. State of Kerala and other Vs. M. Padmanabhan Nair in which the Hon’ble Supreme Court has held that pension is a valuable right and property and the petitioner has a right to claim by virtue of the continuous services rendered by him. The observation of the Apex Court are quoted below:-

"pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

The aforesaid Judgment of the Apex Court has also been followed in JT 1999 (2) SC 359 Dr. Uma Agarwal Vs. State of U.P. & another and has held as under:-

"Now-a-Days, several writ petitions are being filed in this court and various High Courts seeking relief for disbursement, of retrial benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer J. Stated in State of Mysore Vs. C.R. Sheshadri & others (1974(4) S.C.C. 308), a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant-not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and others Vs. M. Padmanabhan Nair (1985 (1) SCC 429 this court had occasion to point out that usually 'the delay occurs by reason of non-production of the L.P.C. (Usually the delay occurs by reason of non-production of the L.P.C. (last pay

Certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In R. Kapur Vs. Director of Inspection (Painting and publication) Income Tax and another, reported in (1994) 6 Supreme Court Cases 589 the Apex Court after relying the judgment of the Apex Court in State of Kerala Vs. M. Madmanabhan Nair 1985 (1) S.C.C. page 429, has held as under:-

"8. *In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in*

State of Kerala Vs. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand. Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

…….…..

10. This court in M. Madmanabhan Nair case has held as under:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In view of the aforesaid, the respondents cannot withhold the benefits admissible to the petitioner after his retirement.

The respondents are, therefore, directed to release all retirement benefits admissible to the petitioner within sis months as agreed by both the parties form the date of filing of the certified copy of this order. The petitioner shall be paid pension, arrears of pay, D.A. and leave encashment etc. He shall also be paid admissible interest on G.P.F. gratuity, G.I.S. etc. If the dues are not paid within stipulated time the petitioner shall get interest on all the retirement benefits @ 6% per annum.

With the aforesaid observations the writ petition is allowed. No order as to costs.

(**Rajesh Tandon J.)**

31.12.2003

*Dhyani